

In Re: Appasami Mudali and ors.

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Court : Chennai

Decided On : Feb-07-1924

Reported in : (1924)46MLJ447

Appellant : In Re: Appasami Mudali and ors.

Judgement :

ORDER

Krishnan, J.

1. In this case the three petitioners before me have been convicted under Section 225-B of the Indian Penal Code and sentenced to various fines by the Sub-Magistrate of Den-Kanikota, and their conviction has been confirmed by the joint Magistrate of Hosur.

2. The prosecution case is that certain constables were sent to the village of Ullugurukki on the 29th May 1922 and P. W. 1, a constable, arrested the first accused and took him by his hand. Then, it is said, the accused asked him why he arrested him and that the constable told him that he was arresting him under Section 54 of the Criminal Procedure Code. The accused seems to have resisted this arrest on the ground that he was not liable to be arrested under Section 54 Cr. P. Code. The constable who arrested him has no warrant for this arrest. Accused 2 and 3, who are the sons of the first accused, also seem to have taken part in resisting the arrest. All the same, all the three accused were arrested by the

constables and taken to the police Station. The charge under Section 225-B is on the ground that the father tried to escape from custody after he was arrested and that the sons helped him to do so. Section 225-B requires that the custody from which a man tries to escape must be a lawful custody he must have been lawfully arrested and detained then only he is liable to conviction under Section 225-B. It is not denied in this case that the constable had no power to arrest the first accused under Section 54 Cr. P. Code. When the prosecution found its weakness after the case was almost nearly over in the Lower Court they changed the case' and contended that the 1st accused was arrested under Section 55 (c) and that the arrest was legal.

3. The question that arises before me is whether, when a constable goes and arrests a man and tells him under what authority he is arresting him, when that authority is not a lawful authority, can the man arrested be convicted and punished under Section 225-B for resisting such arrest although the constable might have authority to arrest him under some provision of law. For the purpose of deciding the point, I will assume that, if the arrest had been under Section 55 (c) it would have been a lawful arrest. That is a question which I shall consider presently. I have come to the conclusion that when a constable arrests a man and tells him expressly that he is doing so under a particular authority which he claims to have to arrest him, and if such arrest is resisted, it will be for the prosecution afterwards to establish that the constable who arrested the man had power to act under the authority that he claimed to have. It is not sufficient for the prosecution afterwards to say that the constable had authority under some other provision of law. I think any man who is being arrested, has a right to ask the Officer arresting him to show him what power he has to do so. If the arrest is under a warrant it has been held that the man arrested is entitled to ask that the warrant be shown to him to see that he is being properly arrested and that, when the warrant is not shown to him and the arrest is made, such an arrest will not be a legal arrest. A man is entitled to know when a constable is arresting him, under what power he is acting and if he (the constable) states that he acts under a certain power which the man knows he has not got, I am not prepared to say that he is not entitled to object to such arrest and to escape from custody when he is arrested. So far as Section 54 is concerned, no attempt has been made before me to justify the arrest, and it seems

to me that on that ground this petition ought to succeed.

4. Apart from it, even, under Section 55 (c) I am not satisfied that the prosecution has proved that the constable had authority to arrest the man. That clause says, ' Any person who is by repute an habitual offender, house-breaker or thief or an habitual receiver of stolen property knowing it to be stolen, or who . by repute habitually commits extortion or, in order to the committing of extortion, habitually puts or attempts to put persons in fear of injury,' may be arrested by an Officer in charge of a Police Station. There is nothing before me to show that there was any ground for taking action under Section 55 (c) by the Police in this case. The Officer who ordered his arrest and gave evidence as C. W. 1, only says that he had reason to suspect that the first accused was concerned in several offences. He does not say anything about his being reputed to be a habitual robber, or house-breaker; at the time he gave evidence the prosecution case was that the arrest was made under Section 54 and not under Section 55 (c); so that his evidence does not relate to a case under Section 55 (c) at all.

5. In these circumstances it seems to me that the arrest of the first accused cannot be considered to have been a lawful arrest and his attempt to escape from custody would not fall under Section 225-B I.P.C. He must therefore be acquitted, and as a result of his acquittal, accused 2 and 3 must also be acquitted.

6. The fines, if paid, will be refunded to them.

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